UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Jun 03, 2010

FILED
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UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION MDL No. 2036

IN RE: FIFTH THIRD BANK CHECKING ACCOUNT OVERDRAFT LITIGATION MDL No. 2166

ORDER

Before the entire Panel: Plaintiffs in the two actions listed on Schedule A, one pending in the Northern District of Illinois (*Schulte*) and the other in the Northern District of Georgia (*Willard*), move, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), to vacate the portions of the Panel's order conditionally transferring the actions to MDL No. 2036. Fifth Third Bank, the sole defendant in *Schulte*, and Fifth Third Bancorp, the sole defendant in *Willard*, separately move for the same relief. In addition, Fifth Third Bank moves, pursuant to 28 U.S.C. § 1407, for separate centralization (as MDL No. 2166) of *Schulte* and *Willard* in the Northern District of Illinois.

Plaintiffs' Lead Counsel and Plaintiffs' Executive Committee in MDL No. 2036, as well as plaintiff in a Southern District of Florida action against Fifth Third Bank, oppose both the motions to vacate and Fifth Third Bank's motion for separate centralization (in other words, they believe *Schulte* and *Willard* should be transferred to MDL No. 2036). The *Schulte* and *Willard* plaintiffs, however, support Fifth Third Bank's motion for separate centralization.

After considering all argument of counsel, we will deny Fifth Third Bank's motion for centralization and grant the motions to vacate. At oral argument, counsel for the *Willard* plaintiff informed the Panel that his client and the *Schulte* plaintiff had reached a settlement with Fifth Third Bank, and that the *Schulte* plaintiff had, that very day, filed with the Northern District of Illinois court a motion seeking preliminary approval of the class action settlement, publication of notice, and the setting of a final fairness hearing. According to counsel for the *Willard* plaintiff and counsel for Fifth Third Bank, the settlement, if approved, will fully resolve the two actions currently before the Panel. In light of these developments, we conclude that neither creation of a separate MDL nor, in the alternative, transfer of *Schulte* and *Willard* to MDL No. 2036 is presently warranted.[1]

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[1] In the event that the settlement is not approved or does not fully resolve these actions, nothing in this order bars either creation of such an MDL or future transfer of the actions to MDL No. 2036.

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407, for centralization of the two actions listed on Schedule A is denied.

IT IS FURTHER ORDERED that the Panel's conditional transfer order designated as "CTO-13" in MDL No. 2036 is vacated insofar as it relates to these actions.

PANEL ON MULTIDISTRICT LITIGATION

John G. Heyburn II
Chairman

Robert L. Miller, Jr.	Kathryn H. Vratil
David R. Hansen	W. Royal Furgeson, Jr.
Frank C. Damrell, Jr.	Barbara S. Jones

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION MDL No. 2036

IN RE: FIFTH THIRD BANK CHECKING ACCOUNT OVERDRAFT LITIGATION MDL No. 2166

SCHEDULE A

Northern District of Georgia

Marlene Willard v. Fifth Third Bancorp, C.A. No. 1:10-271

Northern District of Illinois

Shannon Schulte v. Fifth Third Bank, C.A. No. 1:09-6655